

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

IN RE: SMITH & NEPHEW
BIRMINGHAM HIP RESURFACING
(BHR) HIP IMPLANT PRODUCTS
LIABILITY LITIGATION

MDL No. 2775
Master Docket No. 1:17-md-2775

JUDGE CATHERINE C. BLAKE

FRANK PAGANO,
Plaintiff,

SHORT FORM COMPLAINT

BHR TRACK CASE

vs.

Civil Action No.: 1:18-cv-1619

SMITH AND NEPHEW, INC.,

Defendant.

SHORT FORM COMPLAINT

1. Plaintiff, Frank Pagano, states and brings this civil action in MDL No. 2775, entitled *In re: Smith & Nephew Birmingham Hip Resurfacing (BHR) Hip Implant Products Liability Litigation*. Plaintiff(s) [is/are] filing this Short Form Complaint pursuant to CMO No. 3, entered July 31, 2017 by this Court.

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a resident and citizen of New York and claims damages as set forth below.

3. Plaintiff's Spouse N/A is a resident and citizen of N/A and claims loss of consortium damages as set forth below.

4. Federal jurisdiction is proper based on diversity of citizenship.

5. The Federal District in which Plaintiff's initial implant took place: Eastern District of New York

6. The Federal District in which Plaintiff's revision(s) surgeries took place: Eastern District of New York

7. Plaintiff brings this action [check the applicable designation]:

 X On behalf of himself;

 In a representative capacity as the of the ,

~~having been duly appointed as the by the Court of . A~~

~~copy of the Letters of Administration for a wrongful death claim is annexed hereto~~

~~if such letters are required for the commencement of such a claim by the Probate,~~

~~Surrogate, or other appropriate court of the jurisdiction of the decedent.~~

~~[Cross out if not applicable.]~~

FACTUAL ALLEGATIONS

8. On 12/30/2008, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's RIGHT hip.

9. On or about 12/29/2010, Plaintiff underwent surgery during which the Smith & Nephew BHR Resurfacing System was implanted into Plaintiff's LEFT hip.

10. Plaintiff's RIGHT BHR implant surgery was performed at NYU Langone Medical Center by Thomas Youm, MD. Plaintiff's LEFT BHR implant surgery was performed at NYU Langone Medical Center by Thomas Youm, MD.

11. Plaintiff underwent medically-indicated revision of the RIGHT BHR hip implant on 03/23/2013.

12. Plaintiff suffered the following complications, injuries, and/or indications, some or all of which made revision surgeries medically necessary: Popping, grinding, leg length

difference, pain that progressively got worse, inability to bear weight, and loosening of implant

13. Plaintiff's RIGHT revision surgery was performed by Edwin Su, MD at The Hospital For Special Surgery.

14. Plaintiff adopts the allegations of the Master Amended Consolidated Complaint ("MACC") filed August 4, 2017, and all amendments to the MACC.

15. Notwithstanding the foregoing, Plaintiff does not adopt the following paragraphs of the MACC: N/A

16. Notwithstanding the foregoing, Plaintiff additionally alleges that: As a result of the device failure, Plaintiff experienced persistent pain and finally a revision surgery due to a failed metal on metal partial hip arthroplasty.

ALLEGATIONS AS TO INJURIES

17. (a) Plaintiff claims damages as a result of (check all that are applicable):

 X INJURY TO HIMSELF
 INJURY TO THE PERSON REPRESENTED
 WRONGFUL DEATH
 X SURVIVORSHIP ACTION ECONOMIC LOSS

~~(b) Plaintiffs spouse claims damages as a result of (check all that are applicable):~~

~~{Cross out if not applicable.}~~

 LOSS OF SERVICES
 LOSS OF CONSORTIUM

18. Defendant, by its actions or inactions, proximately caused the injuries to Plaintiff(s).

DEFENDANT-SPECIFIC ALLEGATIONS AND THEORIES OF RECOVERY

19. The following claims and allegations are asserted by Plaintiff(s) and are herein adopted by reference (check all that are applicable):

 X COUNT I

Specific state common law and statutory law that applies: New York Strict Products Liability

 X COUNT II

Specific state common law and statutory law that applies: New York Negligence

 X COUNT III

Specific state common law and statutory law that applies: New York Strict Products Liability: Failure to Warn

 X COUNT IV

Specific state common law and statutory law that applies: New York Negligent Failure to Warn Claims

 X COUNT V

Specific state common law and statutory law that applies: New York Negligent Misrepresentation Claims

 X COUNT VI

Specific state common law and statutory law that applies: New York Negligence Per Se

 X COUNT VII

Specific state common law and statutory law that applies: New York Breach of

Express Warranties

 X COUNT VIII

Specific state common law and statutory law that applies: New York

Manufacturing Defect

 X COUNT IX

Specific state common law and statutory law that applies: New York Punitive

Damages

20. In addition to the above, Plaintiff(s) assert the following additional causes of action under applicable state law:

Consumer Fraud and Deceptive Business Practices Act of New York

PRAYER FOR RELIEF

WHEREFORE, Plaintiff(s) pray for judgment against Defendant as follows:

1. For compensatory damages;
2. Pre-judgment and post-judgment interest;
3. Statutory damages and relief of the state whose laws will govern this action;
4. Costs and expenses of this litigation;
5. Reasonable attorneys ' fees and costs as provided by law;
6. Equitable relief in the nature of disgorgement; and
7. All other relief as the Court deems necessary, just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff(s) hereby demand(s) a trial by jury as to all claims in Complaint so triable.

Dated: June 4, 2018

Respectfully submitted,
JOHNSON LAW GROUP

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